

JUDGE LYNCH
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORMAN DOWELL,

Plaintiff,

-against-

CM & E CON, INC.,

Defendants.

08 CIV 5416

Case No.:

**NOTICE OF FILING OF
NOTICE OF REMOVAL**

COUNSELORS:

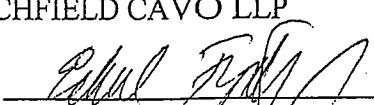
PLEASE TAKE NOTICE, that a Notice of Removal of the above-captioned action from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York, a copy of which is annexed hereto, was duly filed in the United States District Court for the Southern District of New York.

PLEASE TAKE FURTHER NOTICE, that a copy of said Notice of Removal was filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, in accordance with 28 U.S.C. §1446(d).

Dated: New York, New York
June 12, 2008

Yours, etc.,

LITCHFIELD CAVO LLP

By: 
Edward Fogarty, Jr. (4587)
420 Lexington Avenue, Suite 2104
New York, New York 10170
(212) 434-0100
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NORMAN DOWELL,

Plaintiff,

Case No.:

-against-

CM & E CON, INC.,

Defendants.

-----X
NOTICE OF REMOVAL

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

CM & E CON, INC., defendant in the above-captioned action, respectfully provides this Notice of Removal to the Court of an action now pending in the Supreme Court of the State of New York, County of Bronx. As grounds for removal, defendant, by its attorneys, LITCHFIELD CAVO LLP, respectfully sets forth the following:

1. On the 30th day of April, 2008, an action was purportedly commenced against the petitioner in the Supreme Court of the State of New York, in and for the County of Bronx, entitled NORMAN DOWELL vs. CM & E CON, INC., Docket No.: 303527/08, by filing a copy of the summons and complaint with the clerk of the court. True and correct copies are annexed hereto as Exhibit "A".

2. The summons and complaint annexed hereto constitute "all process, pleadings and order" purportedly served upon defendants in the aforesaid action, within the meaning of 28 U.S.C. §1446(a). Defendant/petitioner has not answered the complaint and the time within which they may answer or move with respect to the complaint has not expired.

3. Defendants/petitioners, CM & E CON, INC., purportedly were served a copy of the complaint on or after May 28, 2008. A Notice of Removal is being filed within thirty days after receipt by CM & E CON, INC., of a copy of the complaint, and is timely filed under 28 U.S.C. §1332.

4. Upon the information provided in the summons and complaint, at the time this action was commenced, plaintiff resided in the State of New York.

5. At the time of the commencement of this action, upon information and belief, CM & E CON, INC., was and is a Foreign Corporation with its principal place of business in New Jersey.

6. The above described action is a civil action of which this court has diversity jurisdiction under the provisions of Title 28, U.S.C. §1441, in that plaintiff, NORMAN DOWELL, was a resident of the State of New York; and that CM & E CON, INC., was and is a Foreign Corporation with its principal place of business in New Jersey.

WHEREFORE, petitioner prays that the above action now pending against him in the Supreme Court of the State of New York in and for the County of Bronx, be removed therefrom to this Court.

Dated: New York, New York
June 12, 2008

Yours, etc.,

LITCHFIELD CAVO LLP

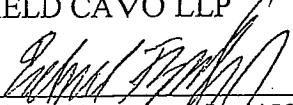
By: 
Edward Fogarty, Jr. (4587)
420 Lexington Avenue, Suite 2104
New York, New York 10170
(212) 434-0100
Attorneys for Defendant

EXHIBIT "A"

06/13/2008 FRI 11:05 FAX

002/011

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

NORMAN DOWELL,

Plaintiff (s),

-against-

CM & E CON, INC.,

Defendant (s).

Index No.:

303527-08

Plaintiff designates
BRONX County
as the place of trial

The basis of venue is the
Plaintiff's residence

SUMMONS

Plaintiff resides at
1305 Burke Avenue

COUNTY of BRONX RECEIVED
BRONX COUNTY CLERK'S OFFICE

APR 30 2008

To The Above Named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you be default for the relief demanded in the complaint.

Dated: Bronx, New York
April 17, 2008

STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
Office & P.O. Address
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

DEFENDANTS' ADDRESS(ES):

CM & E CON, INC
8901 Tonnelle Avenue, 103
North Bergen, NJ 07047

**YOU SHOULD IMMEDIATELY BRING THESE DOCUMENTS TO YOUR
ATTORNEY OR INSURANCE COMPANY**

06/13/2008 FRI 11:05 FAX

003/011

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Index No.:

NORMAN DOWELL,

Plaintiff,

VERIFIED COMPLAINT

-against-

CM & E CON, INC.,

Defendant.

**RECEIVED
BRONX COUNTY CLERK'S OFFICE**

APR 30 2008

Plaintiff complaining of the defendants, by his attorneys, **STILLMAN & STILLMAN, P.C.**, respectfully shows to this Court and alleges:

1. That at all times as stated herein, plaintiff **NORMAN DOWELL** was and still is a resident of the County of Bronx, City and State of New York.
2. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, is a foreign business corporation authorized to do business in the State of New York, having its principal place of business in the State of New Jersey.
3. That on January 20, 2007, upon information and belief, the sidewalk / curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York, was and still is a public walkway.
4. That at all times as stated herein, upon information and belief, on or before January 20, 2007 defendant **CM & E CON, INC.**, was hired to perform certain reconstruction services at the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.

06/13/2008 FRI 11:05 FAX

004/011

5. That at all times as stated herein, upon information and belief, defendant **CM & E CON, INC.**, into a contract/agreement to perform certain reconstruction services at the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
6. That at all times as stated herein, upon information and belief, said contract/agreement was in full force and effect.
7. That at all times as stated herein, upon information and belief, defendant **CM & CON, INC.**, undertook the reconstruction and/or performance of certain reconstruction work pursuant to the aforementioned contract/agreement at the intersection of East Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue Bronx, New York, as stated herein.
8. That at all times as stated herein, upon information and belief, defendant **CM & CON, INC.**, its agents, servants, employees, contractors and/or assigns were charge with the duty to operate the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
9. That at all times as stated herein, upon information and belief, defendant **CM & E CON, INC.**, its agents, servants, employees, contractors and/or assigns were negligent in the operation the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
10. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors and/or assigns were charged with the duty to control the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.

06/13/2008 FRI 11:05 FAX

005/011

11. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors, and/or assigns were negligent in the control of the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
12. That at all times as stated herein, upon information and belief, defendant **CM & E CON, INC.**, its agents, servants, employees, contractors, and/or assigns were charged with the duty to manage the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
13. That at all times as stated herein, upon information and belief, defendant **CM & E CON, INC.**, its agents, servants, employees, contractors and/or assigns were negligent in the management of the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
14. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors, and/or assigns were charged with the duty to maintain the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
15. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors, and/or assigns were negligent in the maintenance of the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.

06/13/2008 FRI 11:05 FAX

006/011

16. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors, and/or assigns were charged with the duty to inspect the sidewalk/curb ramp at the intersection of the E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
17. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors, and/or assigns were negligent in the inspection of the sidewalk/curb ramp at the intersection of the E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
18. That at all times as stated herein, upon information and belief, defendant, **CM & E CON, INC.**, its agents, servants, employees, contractors and/or assigns were charged with the duty to reconstruct the sidewalk/curb ramp at the intersection of the E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
19. That at all times as stated herein, upon information and belief, defendant **CM & E CON, INC.**, its agents, servants, employees, contractors and/or assigns were negligent in the reconstruction of the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York.
20. That at all times as stated herein, the defective condition causing the incident of January 20, 2007, was a result of the defendant's **CM & E CON, INC.**, special use of the sidewalk /curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York, as stated herein.

06/13/2008 FRI 11:05 FAX

2007/011

21. That at all times as stated herein, upon information and belief, defendant **CM & E CON, INC**, acted in willful, wanton, reckless, dangerous and negligent manner, at the time and place stated herein.
22. That on or about January 20, 2007 Plaintiff **NORMAN DOWELL**, was lawfully and legally traversing the sidewalk/curb ramp at the intersection of E. Gun Hill Road and Wilson Avenue, Near 1301 Burke Avenue, Bronx, New York, as stated herein, when without notice or warning plaintiff was caused to trip and fall and strike the ground due to the carelessness, recklessness, and negligence of the defendants, their agents, servants, employees, contractors, and/or assigns, in their duty to operate, manage, maintain, control, inspect, repair and reconstruct the aforesaid sidewalk /curb ramp, suffering severe, serious and permanent personal injuries.
23. That the aforementioned occurrence was caused as a result of the negligence of the defendants as aforesaid and without any negligence on the part of the plaintiff contributing thereto. Said negligence of defendants consisted of and included allowing said sidewalk/curb ramp to remain in a dangerous, hazardous, and unsafe condition with a raised sidewalk/curb ramp; said negligence of the defendant consisted in allowing the sidewalk/curb at the aforesaid location to become and remain in a dangerous and hazardous condition; with the area being unguarded, unprotected and having no warnings; in causing and allowing the sidewalk/curb ramp at said location to become and remain in a dangerous and hazardous condition causing claimant to trip and fall and suffer injuries as hereinafter described; in failing to properly inspect and maintain said area; in allowing a dangerous, hazardous and traplike condition

06/19/2008 FRI 11:05 FAX

008/011

to be created and exist for an unreasonable length of time at the aforesaid location; and in failing to correct or properly repair said sidewalk/curb ramp so as to eliminate the same, and being otherwise negligent, improperly reconstruction at the aforesaid location and allowing said sidewalk/curb ramp to remain in a hazardous and dangerous condition and to become a trap and danger to plaintiff causing these injuries.

24. That solely as a result of the negligence of the defendants as stated herein, plaintiff **NORMAN DOWELL** sustained serious, severe and permanent injuries and disabilities; was rendered sick, sore, lame and disabled; sustained severe mental anguish, nervous shock, great physical pain and loss of enjoyment of life; was compelled to obtain medical treatment and will be compelled to undergo further medical treatment for an undetermined amount of time, and had to expend great sums of money for medical and hospital expenses and has been damaged accordingly in an amount as exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction or such amount as may be determined by a Court and/or jury.

06/13/2008 FRI 11:05 FAX

009/011

WHEREFORE, plaintiff **NORMAN DOWELL** demands judgment against the defendants stated herein, in an amount as exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction or such amount as may be determined by a Court and/or jury, together with the costs and disbursements of this action.

Dated: Bronx, New York
April 17, 2008

ROBERT A. BIRNBAUM
STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400

06/13/2008 FRI 11:05 FAX

010/011

STATE OF NEW YORK }
COUNTY OF BRONX } ss:

INDIVIDUAL VERIFICATION

The undersigned, being duly sworn, deposes and says that the deponent is the plaintiff in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.



Sworn to before me this 13th
day of April, 2008

NOTARY PUBLIC

ROBERT A. BIRNBAUM
Notary Public, State of New York
No. 4925118
Qualified in New York County
Commission Expires Feb. 28 2010

Law Offices Of
STILLMAN & STILLMAN, P.C., 2622 East Tremont Avenue, Bronx, New York 10461

06/13/2008 FRI 11:05 FAX

0011/011

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

NORMAN DOWELL,

Plaintiff,

-against-

CM & E CON, INC.,

Defendant.

SUMMONS AND VERIFIED COMPLAINT

ROBERT A. BIRNBAUM
STILLMAN & STILLMAN, P.C.
Attorneys for Plaintiff
2622 East Tremont Avenue
Bronx, New York 10461
(718) 828-1400